

Michigan Law Review

Volume 98 | Issue 2

1999

Front Matter

Michigan Law Review

Follow this and additional works at: <https://repository.law.umich.edu/mlr>

Recommended Citation

Michigan Law Review, *Front Matter*, 98 MICH. L. REV. i (1999).

Available at: <https://repository.law.umich.edu/mlr/vol98/iss2/1>

This Front Matter is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

Michigan Law Review

VOLUME 98
1999-2000

The University of Michigan
Law School

Michigan Law Review
Ann Arbor, Michigan 48109-1215

Michigan Law Review

Vol. 98, No. 2

November 1999

CONTENTS

ARTICLES

IS THE CLEAN AIR ACT UNCONSTITUTIONAL? *Cass R. Sunstein* 303

ZONING SPEECH ON THE INTERNET:
A LEGAL AND TECHNICAL MODEL..... *Lawrence Lessig* 395
Paul Resnick

THE INFLUENCE OF RACE IN SCHOOL
FINANCE REFORM *James E. Ryan* 432

NOTES

WINNING THE BATTLE, LOSING THE WAR?:
JUDICIAL SCRUTINY OF PRISONERS'
STATUTORY CLAIMS UNDER THE
AMERICANS WITH DISABILITIES ACT *Christopher J. Burke* 482

STAKING OUT THE BORDER BETWEEN
COMMANDEERING AND CONDITIONAL
PREEMPTION: IS THE DRIVER'S PRIVACY
PROTECTION ACT CONSTITUTIONAL
UNDER THE TENTH AMENDMENT? *Rachel F. Preiser* 514

RECENT BOOKS

BOOKS RECEIVED 545

Copyright © 1999 by the Michigan Law Review Association. Except where otherwise expressly provided, the author of each article and Note in this issue has granted permission for copies of that article or Note to be made for educational use, provided that (i) copies are distributed at or below cost; (ii) the author and the *Michigan Law Review* are identified; (iii) prior written notice of the use is given to the Michigan Law Review Association; and (iv) proper notice of copyright is affixed to each copy.

The design on the cover is taken from an etching of The University of Michigan Legal Research Building.

Michigan Law Review (ISSN 0026-2234) is published monthly in October, November, December, February, March, May, June, and August. Subscriptions: United States, \$50 per year in advance, eight numbers; Foreign, \$60. Editorial and Business Offices: Hutchins Hall, 625 S. State St., Ann Arbor, Michigan 48109-1215; 734/764-0542 (Editorial); 734/763-5870 (Business); 734/647-5817 (Fax). Internet Address: <<http://www.law.umich.edu/pubs/journals/mlr/>>. Periodicals postage paid at Ann Arbor, Michigan, and additional mailing offices. POSTMASTER: send address changes to Michigan Law Review, Hutchins Hall, 625 S. State St., Ann Arbor, Michigan 48109-1215.

Printed at Joe Christensen, Inc., Lincoln, Nebraska 68521.

Recent Volumes: Single Issues \$8, Book Review \$14, and Special Issues \$10, postpaid, at Editorial and Business Offices.

Volumes 1 through 92, as well as single issues in those volumes, are available in printed and microform from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209.

Indexed and abstracted in PAIS International.

Because back stock of the *Review* is turned over to a dealer, back numbers are available to the *Review* for a short time only. We must therefore ask that subscribers report the nonreceipt of copies within six months of the mailing date.

We gladly consider unsolicited manuscripts for publication. Citations in manuscripts should follow the form prescribed in *The Bluebook: A Uniform System of Citation* (16th ed. 1996) and *The Chicago Manual of Style* (14th ed. 1993). We regret that we can return only those manuscripts for which we receive postage and handling fees of \$3.50 for first-class and \$1.50 for special fourth-class mail.

UNIVERSITY OF MICHIGAN LAW SCHOOL

Fall 1999

Administrative Officers

LEE C. BOLLINGER, B.S., J.D., *President of the University*
NANCY E. CANTOR, B.A., Ph.D., *Provost and Executive Vice President for Academic Affairs*
JEFFREY S. LEHMAN, A.B., J.D., M.P.P., *Dean*
CHRISTINA B. WHITMAN, A.B., M.A., J.D., *Associate Dean for Academic Affairs*
SUELLYN SCARNECCHIA, B.A., J.D., *Associate Dean for Clinical Affairs*
VIRGINIA B. GORDAN, B.A., J.D., *Assistant Dean for International Programs*
ERICA A. MUNZEL, B.A., J.D., *Assistant Dean and Director of Admissions*
KATHY A. OKUN, M.A., Ph.D., *Assistant Dean for Development and Alumni Relations*

Professors Emeriti of Law

FRANCIS A. ALLEN, A.B., LL.B., J.D.,
LL.D.,
Edson R. Sunderland Professor of Law
OLIN L. BROWDER, A.B., LL.B., S.J.D.,
James V. Campbell Professor of Law
ALFRED F. CONARD, A.B., LL.B., LL.M.,
J.S.D., LL.D.,
Henry M. Butzel Professor of Law
LUKE K. COOPERRIDER, B.S., J.D.
SAMUEL D. ESTEP, A.B., J.D.
ROBBEN W. FLEMING, B.A., LL.B., LL.D.
WHITMORE GRAY, A.B., J.D., LL.D.
JEROLD H. ISRAEL, B.B.A., LL.B.,
Alene and Allan F. Smith Professor of Law
JOHN H. JACKSON, B.A., J.D.,
Hessel E. Yntema Professor of Law
CHARLES W. JOINER, A.B., J.D.
FRANK R. KENNEDY, A.B., LL.B., J.S.D.,
Thomas M. Cooley Professor of Law
MARVIN L. NIEHUSS, A.B., LL.B.
WILLIAM J. PIERCE, A.B., J.D.
BEVERLEY J. POOLEY, B.A., LL.B., LL.M.,
S.J.D.
ROY F. PROFFITT, B.S., J.D., LL.M.
JOHN W. REED, A.B., LL.B., LL.M.,
JUR.Sc.D.,
Thomas M. Cooley Professor of Law
THEODORE J. ST. ANTOINE, A.B., J.D.,
James E. and Sarah A. Degan Professor of Law
RUSSELL A. SMITH, A.B., J.D.
ERIC STEIN, J.U.D., J.D., Dr.H.C.,
Hessel E. Yntema Professor of Law
PETER O. STEINER, A.B., M.A., Ph.D.

Professors of Law

LAYMAN E. ALLEN, A.B., M.P.A., LL.B.
JOHN S. BECKERMAN,* A.B., M.A., Ph.D.,
J.D.
LEE C. BOLLINGER, B.S., J.D.
EVAN H. CAMINKER, B.A., J.D.
DAVID L. CHAMBERS,** A.B., LL.B.,
Wade H. McCree Professor of Law
CHRISTINE M. CHINKIN,* LL.B., LL.M.,
LL.M., Ph.D., *L. Bates Lea Visiting Professor of Law*
LAURENCE D. CONNOR,† A.B., J.D.
EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley Professor of Law
STEVEN P. CROLEY,** A.B., J.D., M.A.
HANOCH DAGAN,* LL.B., LL.M., J.S.D.
NORA V. DEMLEITNER,* B.A., LL.M., J.D.
REBECCA S. EISENBERG,** B.A., J.D.,
Robert and Barbara Luciano Professor of Law
PHOEBE C. ELLSWORTH, A.B., Ph.D.,
Kirkland & Ellis Professor of Law
PAULA L. ETTLEBRICK,† B.A., J.D.
TIMOTHY L. FORT,* J.D., Ph.D.
MERRITT B. FOX,** B.A., J.D., Ph.D.
RICHARD D. FRIEDMAN, B.A., J.D., D.Phil.
BRUCE W. FRIER,** B.A., Ph.D.,
Henry King Ransom Professor of Law
THOMAS A. GREEN, B.A., Ph.D., J.D.,
John Philip Dawson Professor of Law
SAMUEL R. GROSS, A.B., J.D.
Thomas G. and Mabel Long Professor of Law
JAMES C. HATHAWAY, LL.B., LL.M., J.S.D.
MICHAEL A. HELLER, A.B., J.D.
DONALD J. HERZOG, A.B., A.M., Ph.D.
RODERICK M. HILLS, JR., B.A., J.D.
ROBERT L. HOWSE, B.A., LL.B., LL.M.
WILLIAM R. JENTES,† A.B., J.D.
DOUGLAS A. KAHN, B.A., J.D.,
Paul G. Kauper Professor of Law
YALE KAMISAR, A.B., LL.B., LL.D.,
Clarence Darrow Distinguished University Professor of Law
THOMAS E. KAUPER, A.B., J.D.,
Henry M. Butzel Professor of Law
JAMES E. KRIER, B.S., J.D.,
Earl Warren DeLano Professor of Law
JEFFREY S. LEHMAN, A.B., J.D., M.P.P.
RICHARD O. LEMPERT, A.B., J.D., Ph.D.,
Francis A. Allen Professor of Law
MARK J. LOEWENSTEIN,* A.B., J.D.
KYLE D. LOGUE, B.A., J.D.
CATHARINE A. MACKINNON, B.A., J.D.,
Ph.D.
Elizabeth A. Long Professor of Law
DEBORAH C. MALAMUD, B.A., J.D.
RONALD J. MANN, B.A., J.D.

TAKASHI MARUTA,* B.A., M.A., LL.M.,
Ph.D.
J. CHRISTOPHER MCCRUDDEN,* LL.B.,
LL.M., D.Phil., *Helen L. DeRoy Visiting
Professor of Law*
WILLIAM I. MILLER, B.A., Ph.D., J.D.
Thomas G. Long Professor of Law
JEFFREY H. MIRO,† B.A., J.D., LL.M.
ROBERTA J. MORRIS,† A.B., J.D.
CYRIL MOSCOW,† B.S., J.D.
LYNDA J. OSWALD,* M.B.A., J.D.
SALLYANNE PAYTON,** A.B., LL.B.
RICHARD H. PILDES,** A.B., J.D.,
*Roy F. and Jean Humphrey Proffitt
Research Professor of Law*
DONALD H. REGAN, A.B., LL.B., B.Phil.,
Ph.D.,
William W. Bishop, Jr. Professor of Law
MATTHIAS W. REIMANN, DR. IUR., LL.M.
TERRANCE SANDALOW, A.B., J.D.,
Edson R. Sunderland Professor of Law
JANE S. SCHACHTER, A.B., J.D.
CARL E. SCHNEIDER, A.B., J.D., *Stillman
Professor of Law*

BRUNO E. SIMMA,* DOCTORATE OF LAW
KENNETH W. SIMONS,* B.A., J.D.
A.W. BRIAN SIMPSON,** B.A., M.A., D.C.L.,
*Charles F. and Edith J. Clyne Professor
of Law*
PHILIP SOPER, B.A., M.A., J.D., Ph.D.,
James V. Campbell Professor of Law
JOSEPH VINING, B.A., M.A., J.D.,
Harry Burns Hutchins Professor of Law
MICHEL WAELEBROECK,† DOCTOR OF LAW,
LL.M.
LAWRENCE W. WAGGONER, B.B.A., J.D.,
D.Phil.,
Lewis M. Simes Professor of Law
PETER K. WESTEN, B.A., J.D.,
Frank G. Millard Professor of Law
JAMES BOYD WHITE, A.B., A.M., LL.B.,
L. Hart Wright Professor of Law
JAMES J. WHITE, B.A., J.D.,
Robert A. Sullivan Professor of Law
CHRISTINA B. WHITMAN, A.B., M.A., J.D.

Associate Professor of Law

JULIE A. NICE,* B.A., J.D.

Assistant Professors of Law

OMRI BEN-SHAHAR, B.A., LL.B., LL.M.,
Ph.D.
SHERMAN J. CLARK, B.S., J.D.
MARTHA M. ERTMAN,* B.A., J.D.
DANIEL HALBERSTAM, B.A., J.D.
PETER J. HAMMER, B.S., B.A., J.D., Ph.D.

ELLEN D. KATZ, B.A., J.D.
JOAN L. LARSEN,* B.A., J.D.
NINA A. MENDELSON, B.A., J.D.
ADAM C. PRITCHARD, B.A., M.P.P., J.D.
MARK D. WEST, B.A., J.D.

Clinical Professors of Law

DONALD N. DUQUETTE, B.A., J.D.
PAUL D. REINGOLD,** B.A., J.D.

NICHOLAS J. RINE, B.A., J.D.
SUELLYN SCARNECCHIA, B.A., J.D.

Clinical Assistant Professors of Law

LAURA B. ANDONI, B.A., J.D.
P.E. BENNETT,† B.S., M.A., J.D.
MELISSA BREGER, B.S., J.D.
JULIE M. BRODIE, A.B., J.D.
HOWARD J. BROMBERG, B.A., J.D., J.S.M.
LORRAY S.C. BROWN, B.A., J.D.
JULIE P. CLOSE, B.A., J.D.
LORI L. COHEN,† B.A., J.D.
WILLIAM L. COOPER, A.B., J.D., A.M.L.S.
PHILIP M. FROST, B.A., J.D.
KIMBERLY A. JAMES, A.B., J.D.

NEIL S. KAGAN,† B.S., M.S., J.D.
ROCHELLE E. LENTO, B.A., J.D.
ANDREA D. LYON, B.A., J.D.
BRIDGET M. MCCORMACK, B.A., J.D.
GLORIA K. MILLER, B.A., M.A., J.D.
VALERIE R. NEWMAN,† B.A., J.D.
ANNE N. SCHROTH, B.A., J.D.
THOMAS H. SEYMOUR, B.A., M.A., J.D.
J. TAYLOR TEASDALE,† B.A., J.D., LL.M.
GRACE C. TONNER, B.A., J.D.

* Visiting
** On Leave

† Adjunct

Michigan Law Review

Vol. 98, No. 2

November 1999

EDITORIAL BOARD

Editor-in-Chief

ERIC R. OLSON, *of Kentucky*

Managing Editor

CAROLINE SADLOWSKI, *of Connecticut*

Book Review Editors

ADAM MICHAEL BECKER, *of New Jersey*
†CHARLES N.W. KECKLER, *of Michigan*

Executive Article Editor

ALYSON A. FOSTER, *of California*

Executive Note Editor

KATHERINE S. DAWSON, *of Michigan*

Executive Editors

HELEN YEONJUNG KIM, *of Georgia*
MATTHEW K. ROSKOSKI, *of Georgia*
MICHAEL SATZ, *of Texas*

Article Editors

ABIGAIL V. CARTER, *of Wisconsin*
†CAROLYN J. FRANTZ, *of Louisiana*
SEAN C. GRIMSLEY, *of Texas*
CHARLES R. HUGHSON, *of New Mexico*

Note Editors

JASON R. BENT, *of Iowa*
CHRISTOPHER J. BURKE, *of Pennsylvania*
*MATTHEW H. DREXLER, *of Indiana*
†KARIN F. KLAPPER, *of New York*
DAVID D. O'BRIEN, *of Vermont*

Contributing Editors

DAVID E. AMAN JR., *of Florida*
CAROLYN BARTH, *of Massachusetts*
KIMBERLY D. BROWN, *of Ohio*
LEA E. FILIPPI, *of New York*
MARK S. GERMANN, *of Indiana*
HARRIS T. HARTMAN, *of Georgia*
*ALEXIS A. HAWKER, *of Colorado*
RACHEL L. HONG, *of Vermont*
WINIFRED V. KAO, *of Virginia*
JONATHAN P. KOK, *of Michigan*
CHRISTOPHER R. LIRO, *of Michigan*

SUSAN L. LOVELAND, *of Michigan*
AIMEE S. MANGAN, *of Michigan*
NICOLE M. MULLÉ, *of New York*
RACHEL S. PASTER, *of Michigan*
*RACHEL F. PREISER, *of New York*
*DAVID A. RODRIGUEZ, *of Illinois*
DARCY W. SHEARER, *of Massachusetts*
ALLIE SHLECHTER, *of Texas*
BIZUNESH TALBOT, *of Wisconsin*
KRISTA L. TURNQUIST, *of Michigan*
†DAVID L. YOUNG, *of Washington*

Associate Editors

NARA K. AHN, *of Illinois*
JOHN A. AMASH, *of Michigan*
EVE L. BRENSIKE, *of Maryland*
STEVEN Y. BRESSLER, *of New York*
KATRICE L. BRIDGES, *of Illinois*
SHAYNA S. COOK, *of Kansas*
MICHAEL B. COPPOCK, *of New York*
THOMAS J. COSGROVE, *of Maryland*
KEVIN M. COSTANTINO, *of Michigan*
PAUL A. DILLER, *of New Jersey*
MAIA B. GOODELL, *of Massachusetts*
BRIAN C. GRUBER, *of Ohio*
NICOLE C. HERRON, *of Michigan*
STEPHEN E. HESSLER, *of Michigan*
DEE L. HEUGLY, *of Utah*
LAURA E. KACENJAR, *of Ohio*
NIR KAISSAR, *of Indiana*
JOHN G. KNEPPER, *of Wyoming*
SANNIE H. KNUDSEN, *of Illinois*
AMIT A. KURLEKAR, *of Texas*
MORGAN K. LOPEZ, *of California*
JAMALA S. MCFADDEN, *of Illinois*
ROBERT A. MIKOS, *of Iowa*
CHRISTIE FARRIS ÖBERG, *of Ohio*

ANGELA M. OCHOA, *of Wyoming*
DANIELLE A. PHILLIP, *of Illinois*
MARK W. PLETCHER, *of Minnesota*
ANNE S. RAISH, *of Massachusetts*
FREDERICK M. RALPH, *of California*
ASIM REHMAN, *of New York*
NICOLE C. SNYDER-REINKE, *of Idaho*
COLETTE ROUTEL, *of New Jersey*
EDWARD A. SAAD, *of Michigan*
MARCELA D. SANCHEZ, *of New Mexico*
VIVEK S. SANKARAN, *of New Jersey*
HIDEAKI SANO, *of Michigan*
JENNIFER L. SAULINO, *of Ohio*
MAGGIE J. SCHNEIDER, *of Illinois*
BONNIE B. SCHROEDER, *of New York*
TUSHAR J. SHETH, *of Michigan*
DEAN M. SOLOMON, *of California*
ELLEN B. STANFIELD, *of Maryland*
JAY H. STURHAHN, *of Missouri*
NANCY M. WANG, *of New Jersey*
ANDERS C. WICK, *of Illinois*
JONATHAN P. WITMER-RICH, *of Ohio*
JAMIE L. ZYSK, *of Michigan*

* *Article Review Board*

† *Technology Advisory Committee*